

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAINBOW BUSINESS SOLUTIONS, doing  
business as PRECISION TUNE AUTO  
CARE; DIETZ TOWING, INC.; THE  
ROSE DRESS, INC.; VOLKER VON  
GLASENAPP; JERRY SU; VERENA  
BAUMGARTNER; TERRY JORDAN; ERIN  
CAMPBELL; and LEWIS BAE,

Plaintiffs,

v.

MERCHANT SERVICES, INC.; NATIONAL  
PAYMENT PROCESSING; UNIVERSAL  
MERCHANT SERVICES LLC; UNIVERSAL  
CARD, INC.; JASON MOORE; NATHAN  
JURCZYK; ROBERT PARISI; ERIC  
MADURA; FIONA WALSH; ALICYN ROY;  
MBF LEASING LLC; NORTHERN  
FUNDING, LLC; NORTHERN LEASING  
SYSTEMS, INC.; JAY COHEN; LEONARD  
MEZEI; SARA KRIEGER; SAM BUONO;  
and SKS ASSOCIATES, LLC,

Defendants.

No. C 10-1993 CW

ORDER DENYING  
PLAINTIFFS' MOTION  
TO LIFT THE STAY  
(Docket No. 650)

On July 22, 2014, this Court granted the parties' stipulation to stay this case pending the Ninth Circuit's resolution of Defendants' appeal of this Court's class certification orders. The stipulation provided that either party could petition the Court to lift the stay for good cause. Plaintiffs now move to lift the stay so they may file a petition for an interim fee award. Defendants oppose the motion and Plaintiffs have filed a reply.

Plaintiffs argue that they are entitled to attorneys' fees for work performed to secure a preliminary injunction prohibiting Defendant SKS Associates from collecting money based on expired

1 lease agreements. The preliminary injunction was entered on June  
2 13, 2011. SKS Associates appealed the preliminary injunction and,  
3 on March 22, 2012, the Ninth Circuit affirmed. In its memorandum  
4 disposition, the Ninth Circuit specifically stated that it  
5 affirmed the preliminary injunction "on the understanding that the  
6 district court will review the continued existence and the scope  
7 of the preliminary injunction, if and when a class is certified."  
8 Docket No. 352 at 3.

9 Plaintiffs assert that a February 28, 2013 consent decree  
10 between Defendants and the New York State Attorney General  
11 permanently enjoins the behavior prohibited by the preliminary  
12 injunction in this case. Accordingly, Plaintiffs argue, the  
13 preliminary injunction is moot, they are necessarily the  
14 prevailing party as to the issues in the preliminary injunction,  
15 nothing in the pending appeal will impact the analysis with  
16 respect to their entitlement to fees, and they are entitled to  
17 seek an interim fee award. Plaintiffs further argue that good  
18 cause exists to lift the stay because an interim fee award will  
19 assist it in continuing to seek money damages on behalf of the  
20 same individuals protected by the injunction.

21 Defendants counter that one of the issues on appeal is the  
22 certification of the SKS Post-Lease Expiration Class to bring  
23 claims for injunctive relief and money damages based on the  
24 alleged behavior prohibited by the preliminary injunction.  
25 Defendants argue that, even if the claim for injunctive relief,  
26 and therefore the preliminary injunction, is mooted by the New  
27 York consent decree, whether the SKS Post-Lease Expiration Class  
28 is decertified should be considered in determining the

1 reasonably of fees expended to seek a preliminary injunction  
2 on behalf of the class.

3 Assuming without deciding that Plaintiffs' claim for  
4 injunctive relief against Defendant SKS Associates is moot and the  
5 question of whether Plaintiffs are entitled to attorneys' fees for  
6 work towards obtaining the preliminary injunction is ripe for  
7 decision, the Court finds that the question of the amount of fees  
8 attributable to that work is intertwined with Plaintiffs'  
9 potential claim for attorneys' fees for work on other pending  
10 claims. Accordingly, the Court declines to lift the stay for the  
11 limited purpose of allowing Plaintiffs to file an interim fee  
12 request.

13 IT IS SO ORDERED.

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15 Dated: April 5, 2016



16 CLAUDIA WILKEN  
17 United States District Judge  
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